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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 522

SEATRAIN LINES, INC., *Appellant*

v.

UNITED STATES OF AMERICA
INTERSTATE COMMERCE COMMISSION
PAN-ATLANTIC STEAMSHIP CORPORATION,
Appellees

MOTION TO AFFIRM

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Pan-Atlantic Steamship Corporation, hereinafter sometimes called Pan-Atlantic, one of the appellees in the above-entitled case, moves to affirm the judgment of the district court on the ground that the question presented is so unsubstantial as not to require further argument.

This is a direct appeal from the final judgment entered on June 17, 1957, by the United States District Court for the District of Delaware, dismissing an

action to set aside an order of the Interstate Commerce Commission.

Appellee, Pan-Atlantic, is a common carrier by water authorized by the Interstate Commerce Commission to transport, insofar as here relevant, commodities generally in interstate and foreign commerce between specified Atlantic coast ports and between Atlantic coast and Gulf of Mexico ports. In addition to its fleet of conventional C-2 type dry cargo vessels, Pan-Atlantic has acquired tankers of the T-2 type, which have been equipped with cargo decks to permit the transportation thereon of containers and truck trailers. The transportation of bulk petroleum alone in a given vessel is exempt under Section 303(d) of the Interstate Commerce Act (49 U.S.C. 903(d)). Pan-Atlantic is presently transporting, and desires to continue to transport, in its converted tankers not only bulk petroleum in the tanks, but also as deck loads in truck trailers or containers the general commodities that its certificate, issued by the Commission, authorizes it to transport. This cannot be done without subjecting the bulk petroleum to regulation in the absence of an order of exemption issued by the Commission under Section 303(e)(2) of the Interstate Commerce Act (49 U.S.C. 903(e)(2)).

Appellant, Seatrain Lines, like Pan-Atlantic, is a common carrier by water authorized by the Commission to transport commodities generally in interstate and foreign commerce between specified Atlantic coast ports and between Atlantic coast and Gulf of Mexico ports. Appellant holds the same exemption that it now seeks to deny to Pan-Atlantic, on virtually the identical bulk petroleum commodities, pursuant to the Commission's order in *Seatrain Lines, Inc., Exemption*

Application—Oil, Docket No. W-543, Sub. No. 1, decided July 19, 1949 (not printed).

By its Report and Order of July 3, 1956, Division 4 of the Interstate Commerce Commission found unanimously that the transportation by Pan-Atlantic as a contract carrier of certain bulk petroleum commodities between Louisiana and Texas ports and Atlantic ports, north of and including Norfolk, "is transportation which it is the policy of Congress, as declared in Section 303(e)(2) of the Act (Title 49 U.S.C. 903(e)(2)), to exclude from the provisions of Part III thereof, and which, by reason of the requirement of special equipment or shipment in bulk, is not actually and substantially competitive with transportation by any common carrier subject to Part I, II or III of the Act; and that the exemption of such transportation from regulation is necessary to carry out the declared policy of Congress."[1] By order of September 20, 1956, the entire Commission by unanimous vote denied Seatrain Lines' petition for reopening of the proceeding, for further hearing, for reconsideration by, and oral argument before, the entire Commission. Thereupon the Commission's order of exemption became effective October 22, 1956.

Appellant's subsequent complaint to the lower court was dismissed by order entered June 17, 1957. The sole issue raised by the instant appeal is whether the Interstate Commerce Commission may grant an exemption under Section 303(e)(2) of the Interstate Commerce Act (49 U.S.C. 903(e)(2)) without making jurisdictional findings that the exemption is consistent with and will effectuate the national transportation policy (49 U.S.C. preceding § 1).

[1] Jurisdictional Statement of Appellant, pp. 28A and 29A.

The pertinent portion of the section of the Interstate Commerce Commission under which the exemption order in question was granted (Section 303(e)(2); 49 U.S.C. 903(e)(2)) reads as follows:

> "It is hereby declared to be the policy of Congress to exclude from the provisions of this part, in addition to the transportation otherwise excluded under this section, transportation by contract carriers by water which, by reason of the inherent nature of the commodities transported, their requirement of special equipment or their shipment in bulk, is not actually and substantially competitive with transportation by any common carrier subject to this part or part I or part II."[1]

The national transportation policy is a general declaration of congressional policy intended as a guide in the administration of the Interstate Commerce Act as a whole. Section 303(e)(2), on the other hand, is by its terms, a *specific* declaration of congressional policy. Indeed, the first words of this subsection are *"It is hereby declared to be the policy of Congress * * *"* to exclude from regulation certain types of transportation. It is a well-known rule of statutory construction that specific provisions of a statute take precedence over general provisions. In *Clifford F. MacEvoy Co. v. United States*, 322 U. S. 102, for example, at page 107, the following appears:

> "However unusual may be the general language of a statute *'it will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * * Specific terms prevail over the general in the same or another statute which otherwise might be controlling.' Ginsberg and Sons v. Popkin*, 285 U. S. 204, 208, 52 S. Ct. 322, 323." (Emphasis added)

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[1] Juridictional Statement of Appellant, page 2.

As the district court stated, exemptions provided for under Part III of the Interstate Commerce Act may be divided into three types. Sections 303(b), (c) and (d) (49 U.S.C. 903(b), (c) and (d))[1] by their specific terms flatly exempt certain types of water transportation from the provisions of the Act. These sections amount to a determination of legislative policy that the ends of national transportation will best be served by non-regulation in these particular areas. The second type of exemption is represented by the provisions of Sections 303(e)(1) and 303(g) (49 U.S.C. 903(e)(1) and 903(g))[2] Those sections provide for non-regulation except where necessary to carry out the stated ends of the national transportation policy. The third type of exemption is provided by the section here at issue, Section 303(e)(2). In that section non-regulation is ordered where there is an absence of competition with regulated carriers for any one of three reasons. In the second type of exemption referred to above the Congress made specific reference to the national transportation policy. In the third, no such reference appears.

The provisions of Section 303(e)(2) are clear and definite, incapable of dual interpretation. They provide that if in a given case the Commission shall find that the transportation by a contract carrier by water, by reason of the inherent nature of the commodities transported, their requirement of special equipment, or their shipment in bulk, is not actually and substantially competitive with transportation by any common carrier subject to Parts I, II, or III of the Act, the Commission, shall exempt that transportation from the

[1] Jurisdictional Statement of Appellant, page 1A.

[2] Ibid., page 2A.

provisions of the Act. Thus Section 303(e)(2) carefully spells out the considerations upon which the Commission's power to grant an exemption shall be exercised. If the Commission should grant or withhold an exemption based on considerations other than those specifically included in the section, clearly it would err. Whether or not the grant of an exemption under Section 303(e)(2) would accomplish the purposes of the national transportation policy is not one of the considerations set forth in the Act. The Commission correctly refused to read that consideration into the section and thereby to make a finding that would have been at the very least gratuitous. Instead it properly limited itself to a finding that the considered transportation is not actually and substantially competitive with transportation by common carriers subject to Part I, II or III of the Act because of the requirement of special equipment or shipment in bulk. As the district court found, the Commission's report discloses ample facts to substantiate this finding, nor is that denied here by the appellant.

Whether or not a finding by the Commission that the exemption granted to Pan-Atlantic Steamship was in accordance with the national transportation policy would have been a proper finding, manifestly it would have been an unnecessary one. The courts have never insisted upon detailed findings in Commission reports so long as "the report read as a whole, sufficiently expresses the conclusion of the Commission, based upon supporting data * * *". *United States* v. *Louisiana*, 290 U. S. 70, 80. The appellant appears to argue that the Interstate Commerce Commission, by its own statement, did in fact consider the national transportation policy in arriving at its decision, even though

it made no specific finding with respect thereto. (Juris. Statement, p. 6) It would appear, therefore, that the appellant's complaint runs not so much to the failure of the Commission to give consideration to the policy, as to its failure to make a specific finding regarding it.

In *Ward Transports* v. *United States*, 125 F. Supp. 363, (D.C. Col., 1954) affirmed per curiam without opinion 348 U.S. 979, 75 St. Ct. 570 (1955), the lower three-judge court had the following to say (p. 368):

> "The plaintiffs next contend that the Commission's report and order are not supported by adequate findings. In answer to this contention it seems sufficient to say that the Commission by its positive findings impliedly made the negative findings which the truck companies insist should have been made. Further, the Supreme Court has held that the Interstate Commerce Act does not compel the Commission to make detailed findings of fact except in a case where damages are awarded, but only requires the Commission to file a written report stating its conclusions, together with its decision and order, and where the Commission sufficiently discloses the essential basis of its judgment in its report the Court will not set that report aside. *Alabama Great Southern Railroad Co.* v. *United States*, supra, 340 U.S. at pages 227-228, 71 S. Ct. 246; *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U.S. 515, 535, 66 S. Ct. 687, 90 L.Ed. 821."

That language is particularly applicable in the instant proceeding. Especially in view of the explicitness and self sufficiency of Section 303(e)(2), a specific finding by the Commission with regard to the national transportation policy or any other provision of the Act, would have been surplusage. As the Supreme Court stated in *Alabama Great S. R. Co.* v. *United*

States, 340 U. S. 216, 227-8, "* * * the basic findings essential to the validity of a given order will vary with the statutory authority invoked and the context of the situation presented." For the reasons stated, the "statutory authority" here invoked and the "context of the situation presented" required no specific finding by the Commission with respect to the provisions of national transportation policy.

For the foregoing reasons, it is evident that this appeal presents no substantial question. It is therefore respectfully submitted that the judgment of the district court should be affirmed.

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October 29, 1957

Certificate of Service

I, Warren Price, Jr., one of the attorneys for Pan-Atlantic Steamship Corporation, an appellee herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 29th day of October, 1957, I served copies of the foregoing Motion to Affirm on the several parties thereto, as follows:

1. On the United States, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to the office of Leonard G. Hagner, Esq., United States Attorney, Federal Building, Wilmington, Delaware, and by mailing a copy in a duly addressed envelope, with first class postage prepaid, to the Solicitor General, Department of Justice, Washington 25, D. C.

2. On the Interstate Commerce Commission, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to Robert W. Ginnane, Esq., its Chief Counsel, at the offices of the Commission, Washington 25, D. C.

3. On Seatrain Lines, Inc., appellant, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorneys S. S. Eisen, Esq., 140 Cedar Street, New York, N. Y., and Raoul Berger, Esq., 1108 Sixteenth Street, N. W., Washington 6, D. C.

WARREN PRICE, JR.